

**MOTIONS FOR NEW TRIAL — RULE 24.1 — Grant of new trial for verdict contrary to weight of the evidence — Revised 10/2009**

Rule 24.1(c)(1), Ariz. R. Crim. P., allows the trial court to grant a new trial or, in a capital case, an aggravation or penalty hearing if the verdict is contrary to law or to the weight of the evidence. In *State v. Tubbs*, 155 Ariz. 533, 535, 747 P.2d 1232, 1234 (App. 1987), *quoting State v. Clifton*, 134 Ariz. 345, 348, 656 P.2d 634, 637 (App. 1982), the Court of Appeals explained the trial court's role in weighing the evidence in the context of such a Rule 24 motion for a new trial, "[A] motion for a new trial is discretionary and as such, in considering the motion for a new trial, the trial court may weigh the evidence and consider the credibility of witnesses." In contrast, the Court of Appeals described the trial court's more limited role in weighing the evidence in context of a Rule 20 motion for judgment of acquittal, where the trial judge gives "full credence to the right of the jury to determine credibility, weigh the evidence, and draw justifiable conclusions therefrom." *Id.*, *quoting State v. Clifton*, 134 Ariz. 345, 348, 656 P.2d 634, 637 (App. 1982). The Court of Appeals further highlighted the trial court's expanded power when considering a Rule 24 motion for a new trial, "Because a motion for a new trial based on the claim that the verdict is contrary to the weight of the evidence involves weighing evidence and determining the credibility of witnesses, the trial court's ruling on such a motion will not be reversed on appeal absent an abuse of discretion." *Id.*, *quoting State v. Neal*, 143 Ariz. 93, 97, 692 P.2d 272, 276 (1984).

Although the trial court must weigh the evidence presented in determining whether to grant a motion for new trial, the court does not simply substitute its view of the evidence for that of the jury. "Trial by jury is one of the most treasured guarantees of the Bill of Rights. Any interference with the jury's province must be exercised punctiliously." *State v. Clifton*, *supra*. Thus, a new trial [for a verdict contrary to the weight of the evidence] under Rule 24 is required "only if the evidence was insufficient to support a finding beyond a reasonable doubt that the defendant committed the crime." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075, *cert. denied*, 519 U.S. 967 (1996), *quoting State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114, *cert. denied*, 510 U.S. 927 (1993). And, when determining the sufficiency of the evidence, the evidence is viewed in the light most favorable to sustaining the verdict; the court will resolve all inferences against the defendant. *State v. Spears*, *supra*, *quoting State v. Gallegos*, 178 Ariz. 1, 9, 870 P.2d 1097, 1105, *cert. denied*, 513 U.S. 934 (1994).

The test utilized to determine insufficiency of evidence is whether there is substantial evidence to support the guilty verdict. *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984); *State v. Clow*, 130 Ariz. 125, 634 P.2d 576 (1981). In other words, whether there was sufficient evidence so that a rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Mincey*, *supra*, *quoting State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), *cert. denied*, 459 U.S. 882 (1982). Hence, "[t]o set aside a jury verdict for insufficient evidence, it must clearly appear that upon no hypothesis whatever is there sufficient

evidence to support the conclusion reached by the jury.” *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).